
(2009) 03 KL CK 0001

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8244 of 2008

Cochin International Airport Ltd.

APPELLANT

Vs

Regional Labour Commissioner

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Airports Authority of India Act, 1994 — Section 1(3), 2
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 12, 14
Contract Labour (Regulation and Abolition) Act, 1970 — Section 2(1), 23, 24, 7
Industrial Disputes Act, 1947 — Section 2
International Airports Authority Rules, 1937 — Rule 134(1), 134(3), 3(9), 78

Citation : (2009) 3 KLT 80

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : M. Pathros Mathai, Saji Varghese and Mariam Mathai, for the Appellant; Babu Karukapadath, for the Respondent

Final Decision : Allowed

Judgement

V. Giri, J.—The issue, which has been posed for consideration in this Writ Petition turns around the definition of "appropriate Government" as mentioned in the Contract Labour (Regulation and Abolition) Act, 1970 [hereinafter referred to as "CLRA Act"]. Since the term "appropriate Government" is to be determined with reference to the definition of the said term as contained in the Industrial Disputes Act (for short "the ID Act") essentially, certain provisions of the ID Act also come up for consideration. By the nature of the activity carried on by the petitioner, the provisions of the Aircraft Act and the Rules framed thereunder as also the International Airports Authority Act, 1971 and Airports Authority of India Act have also come up for consideration.

2. The petitioner, Cochin International Airport, a public limited company was incorporated under the Companies Act, with the object of constructing, commissioning, operating, managing and maintaining an Airport of international

standards. The Government of Kerala currently holds 33.33% of the equity shares and public hold 63% of the shares of the company.

3. The petitioner company commenced construction of the buildings, airfield, taxi tracks, structures and allied facilities for the Airport. The work was awarded to contractors. The contractors, who were awarded work, had obtained licences from the licensing authority of the Government of Kerala. The petitioner, in turn, had applied for registration at the registering office of the Government of Kerala u/s 7 of the CLRA Act.

4. The petitioner makes reference to certain steps which were originally taken as early as in the year 1996 by the 2nd respondent, being the Assistant Labour Commissioner (Central), the registering authority of the Central Government under the Act, inter alia, requiring the petitioner to register its establishment under the Act. The petitioner gave a reply repudiating the authority of the 2nd respondent, contending that it has already registered with the registering authority of the State Government. It seems that there was a gap of about 10 years and thereafter, by Ext.P5 communication in the year 2006, the respondents herein are stated to have called upon the petitioner requiring it to take steps to register itself as a principal employer with the registering authority of the Central Government. To Ext.P5 letter issued, the petitioner submitted Ext.P6 detailed reply. This was met with Ext.P7 requiring the petitioner to show cause why punitive action shall not be taken against the petitioner for not taking action under Sections 23 and 24 of the CLRA Act and the Rules framed thereunder. It is, at this juncture, that the Writ Petition has been filed challenging Exts.P5 and P7 and also seeking a direction to restrain the respondents from taking steps against the petitioner or its Managing Director or other Directors under the CLRA Act.

5. The gist of the contentions taken up by the petitioner is that it has registered itself with the competent registering authority of the State Government and State Government is the "Appropriate Government" insofar as the petitioner is concerned.

6. Section 7 of the CLRA Act deals with registration of establishments and every principal employer of an establishment, to which the Act applies, has to make an application for registration of the establishment in the prescribed form. There are separate Registration Officers under the Central Government and the State Government. "Appropriate Government" as such is defined in Section 2(a) of the CLRA Act as the "Central Government" in relation to an establishment in respect of which the "appropriate Government" under the ID Act is the Central Government and "State Government" in relation to any other establishment.

7. "Appropriate Government" is defined in Section 2(a) of the ID Act and in relation to an industrial dispute concerning any industry carried on by or under the authority of the Central Government, it is the "Central Government" and in relation to any other industrial dispute, it is the "State Government". It is

contended that the petitioner is not an establishment carried on by or under the authority of the Central Government and therefore, it is the State Government, which is the appropriate authority insofar as the petitioner is concerned. Once, therefore, the petitioner has registered itself with the registering authority of the Appropriate Government viz., the State Government, it cannot be required to get itself registered with the registering authority of the Central Government. It is then contended that the entire proceedings taken by the respondents are, therefore, void.

8. The respondents would contend that the petitioner has established an Aerodrome and is maintaining and running the same. Comprehensive control is exercised by the Central Government. That the industry which is run by the petitioner is under the authority of the Central Government and consequently, it is the Central Government, which constitutes an Appropriate Government u/s 2(a) of the CLRA Act. In the alternative, it is contended that the petitioner operates an Air Transport Service and going by the definition of "Appropriate Government" under the ID Act, an establishment which operates Air Transport Service would also be comprehended by the Central Government for the purpose of Section 2(a) of the CLRA Act. The definition of "Air Transport Service" as occurring in the International Airports Authority Act and the Rules framed under the said Act are also referred to.

9. A reply affidavit has been filed by the petitioner.

10. I heard Mr. Pathros Mathai, learned Senior counsel for the petitioner and Mr. Babu Karukapadath, learned Counsel appearing for the respondents.

11. The entire dispute turns around the definition of "Government" which is eligible to be treated as the Appropriate Government in relation to the petitioner for the purpose of the ID Act and for the purpose of CLRA Act and it will, therefore, be advantageous and apposite to refer to the relevant provisions of those Acts.

12. Section 2(a) of the CLRA Act reads as follows:

2(a) "appropriate Government" means:

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947) is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated;

13. Since it is the definition of the word "Appropriate Government" as contained in the ID Act, that is referred to in the CLRA Act, Section 2(a) of the ID Act is also relevant:

2(a) "appropriate Government" means:

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government....

14. The provisions, which comes up for consideration and in relation to which arguments have been advanced by the learned Counsel for the parties are "any industry carried on by or under the authority of the Central Government". I will refer to the contentions raised by the learned Counsel for the respondents that the petitioner also runs an ATS at a later stage. It is not difficult to discern an industry which is carried on by the Central Government. The dispute is with regard to the collocation of the words "under the authority of the Central Government".

15. A great deal of controversy generated from the aforementioned collocation of words has been settled by the decision of the Constitution Bench of the Supreme Court in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, . The Supreme Court had, in the said decision, formulated the following point (among two others) for determination of the case.

(i) What is the true and correct import of the expression "appropriate Government" as defined in Clause (a) of Sub-section (1) of Section 2 of the CLRA Act;

16. Before concentrating on the relevant provisions in the CLRA Act, the court proceeded to have a bird's eye view of the Act. The court referred to the definition of "appropriate government" as contained in Section 2(1)(a) of the CLRA Act as it stood prior to the amendment of the CLRA Act, 1978 with effect from 21.8.1976 and then went on to advert to the amended definition of "appropriate government" as occurring in Section 2(1)(a) of the Act. The court noted in paragraph 24 of the judgment that the phrase ""any industry carried on by or under the authority of the Central Government" is a common factor in both the unamended as well as the amended definition of "appropriate government". It was noticed that the expression combines three alternatives viz., (a) any industry carried on by the Central Government; (b) any industry carried on under the authority of the Central Government and (c) any industry carried on by a railway company. Alternatives (a) and (c), the court noted, are too clear, to admit of any polemic. Construing alternative (b), the court noted that an industry being carried on "under the authority of the Central Government" cannot be equated with "any industry carried on by the Central Government itself. The court then observed that what falls for consideration by the court are the words "under the authority of the Central Government" and the word "authority is the key word in the said collocation of words".

17. Definition of "authority" contained in Black's Law Dictionary and Words and Phrases was referred to by the court in extenso and the court came to the

conclusion that the phrase "any industry carried on under the authority of the Central Government" implies an industry, which is carried on by virtue of, pursuant to conferment of, grant of, or delegation of power or permission by the Central Government to a Central Government company or other Government companies/undertaking. As the court noted "to put it differently, if there is a lack of conferment of power or permission by the Central Government to the Government company or undertaking, it disables such a company/undertaking to carry on the industry in question".

18. Having laid the foundation in that behalf, the court then undertook a reference to the case law relating to parameters laid down by the court on different occasions as to what entity could be considered as State or other authorities within the meaning of Article 12 of the Constitution. The court then held that the fact of being an instrumentality of a Central/State Government or being State within the meaning of Article 12 of the Constitution cannot be determinative of the question as to whether an industry carried on by a company/corporation or instrumentality of the Government is by or under the authority of the Central Government for the purpose of or within the meaning of the definition of "Appropriate Government" in the CLRA Act. The court then held in para. 39 of the judgment:

39. If this aspect is kept in mind it would be clear that the Central Government will be the "appropriate Government" under the CLRA Act and the ID Act provided the industry in question is carried on by a Central Government company/an undertaking under the authority of the Central Government. Such an authority may be conferred, either by a statute or by virtue of the relationship of principal and agent or delegation of power. Where the authority, to carry on any industry for or on behalf of the Central Government, is conferred on the government company/any undertaking by the statute under which it is created, no further question arises. But, if it is not so, the question that arises is whether there is any conferment or authority on the government company/any undertaking by the Central Government to carry on the industry in question. This is a question of fact and has to be ascertained on the facts and in the circumstances of each case.

19. The Court then proceeded to make a reference to the case law on the subject starting from Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, . The principle laid down in Heavy Engineering, that in the absence of a statutory provision, a commercial corporation acting on its own behalf, even though it was controlled wholly or partially by a Government department would be ordinarily presumed not to be an agent or the servant of the State, in broad terms, met with the approval of the Constitution Bench. Reference was then made by the court to Hindustan Aeronautics Ltd. Vs. The Workmen and Others, , Rashtriya Mill Mazdoor Sangh, Nagpur Vs. Model Mills, Nagpur and Another, and Food Corporation of India Workers" Union Vs. Food Corporation of India and Others, .

20. The court then considered whether the law was correctly laid down in Air

India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], . Air India construed the word "control" and the court held that the said word was required to be interpreted "in the changing commercial scenario, broadly in keeping with the constitutional goals and perspectives. The interpretation must be based on some rational and relevant principles and that the public law interpretation is a basic tool of interpretation , in that behalf relegating common law principles to purely private law field". Air India, therefore, concluded that Heavy Engineering had narrowly interpreted the expression "appropriate Government" on the common law principles which would no longer bear any relevance when tested on the anvil of Article 14. But the Constitution Bench in SAIL approved in broad terms the principles laid down in Heavy Engineering and went on to hold that the interpretation given to the expression "appropriate Government" in Air India was erroneous. It was so concluded by the Constitution Bench in para. 46 of the judgment:

We have held above that in the case of a Central Government company/undertaking, an instrumentality of the Government, carrying on an industry, the criteria to determine whether the Central Government is the appropriate Government within the meaning of the CLRA Act, is that the industry must be carried on by or under the authority of the Central Government and not that the company/undertaking is an instrumentality or an agency of the Central Government for purposes of Article 12 of the Constitution; such an authority may be conferred either by a statute or by virtue of the relationship of principal and agent or delegation of power and this fact has to be ascertained on the facts and in the circumstances of each case. In view of this conclusion, with due respect, we are unable to agree with the view expressed by the learned Judges on interpretation of the expression "appropriate Government" in Air India case. Point (i) is answered accordingly.

21. Taking the principle laid down by the Supreme Court as extracted above, as determinative of the question as to which Government is eligible to be treated as an "appropriate Government" for the purpose of ID Act and for the purpose of CLRA Act, it could be safely concluded that if an authority to carry on the company or undertaking is conferred by the Central Government under a statute, then no further question survives. The Central Government is the "appropriate Government". The question as to whether the establishment is otherwise a "State" within the meaning of Article 12 of the Constitution is not determinative of the issue. If it is possible to discern the relationship of principal and agent qua the Central Government and the establishment in question, then again, it would point to the Central. Government as the "appropriate Government" qua the establishment in question. This is a matter, which has to be ascertained with reference to the facts of each case.

22. Mr. Pathros Matthai, learned Senior Counsel submits that the word "authority" occurring in Section 2(a) of the Act has been construed by the Supreme Court as one which should form the basis for the emergence of a

principal-agent relationship and it is in such circumstances that an industry can be construed as one being carried on under the authority of the Central Government". The establishment should have the status of an agent of the Central Government as such, with the Central Government acting as the principal. It is contended that if the said test is applied, the petitioner obviously cannot be considered as the agent of the Central Government; nor is there any principal-agent relationship between the two. The Central Government cannot be considered as the "appropriate Government" qua the petitioner, it is contended.

23. Mr. Babu Karukapadath, learned Counsel for the respondents submits that the establishment is running an industry under the authority of the Central Government. No Airport facility can be established any where in the country, except on a licence issued in that behalf by the Central Government under the Aircraft Act and Rules. The petitioner has also no dispute that it will not be in a position to operate the facility of an Aerodrome, unless it is licensed in that behalf by the Central Government. The contention, therefore, seems to be that the functioning of the facility is sanctioned under the authority of the Central Government and the moment the permission is taken away or the licence is revoked, the industry is disabled from functioning in a lawful manner. Therefore, the functioning of the industry, it is contended, is dependent on the authority given in that behalf by the Central Government. Consequently, it is the Central Government which should figure as the "Appropriate Government".

24. The view which was originally taken by the Supreme Court in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], that all Central Government undertakings would be liable to treat the Central Government as the "Appropriate Government", for the purpose of Section 2(a) of the ID Act and CLRA Act was found to be erroneous by the Constitution Bench in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, . The fact that the Central Government held the major shareholding or that it is a Central Government company, within the meaning of Section 617 of the Companies Act was found to be not a determinative factor of the question that arises in the context of Section 2(a) of the ID Act. The question is whether the industry is run "under the authority of the Central Government".

25. Mr. Babu, therefore, submits that the new test that has been formulated in the case of the same in contra distinction with what was adopted in the case of *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], could broaden the case of Central Government being treated as an "Appropriate Government" in a case like the present one. The moment the question as to whether the industry can function without the authority of the Central Government is answered in the negative, the conclusion that should follow is that the industry is functioning under the Authority of the Central Government and consequently, it is the Central Government which is eligible to be treated as the "Appropriate Government". I am afraid, I am unable to accept

this submission. The conclusive test formulated by the Supreme Court in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, in the context of what is discernible from the word "authority is whether there has sprung into existence a principal-agent relationship between the Government and the industry in question, i.e., to say whether in running an industry, the concerned principal-employer was actually acting on behalf of the Central Government. The Supreme Court, no doubt, did not say that the existence of principal-agent relationship between the Government and the industry is the only test for determining that the industry is run under the authority of the Central Government. But what are the conclusions that could be derived from the statement of law as contained in paras.29 and 39 of the judgment in particular. From a reading of the judgment and the statutory provisions, when can it be said that the industry is run "under the authority of the Central Government?" The fact that the activities carried on, by its very nature, would require a licence of the Central Government under the Aircraft Rules would only lead to the conclusion that the activities being carried on therein are regulated by the Central Government. The activity carried on in an Aerodrome would, therefore, be subject to the conditions that the Central Government would impose in granting a licence under the Aircraft Act and the Rules framed thereunder. Absence of a licence would make the activity illegal. But, does it mean that the industry came into existence and is being run under the authority of the Central Government? In my view, it could not. The word "under the authority of the Central Government" occurring in Section 2(a) of the Act would mean that the emergence of the establishment as an entity is sourced to an authority sanctioned in that behalf by the Central Government. This could happen in more than one case. The Central Government could itself take a decision to establish an industry either by a legislative fiat or by a non-statutory instrument. It can direct an industry to be set up or an industry can be established. The latter is a case where an agreement is entered into between an entity and the Central Government paving the way for the emergence of the industry as such. In the former case, the industry in question would owe its existence to a directive issued as a decision by the Central Government. In my view, these would broadly be cases where the entity could say that it has been either set up or functions under the authority of the Central Government. To put it differently, where the industry owes its existence to a specific authority granted by the Central Government qua the running of an industry, it can be said that the industry functions under the authority of the Central Government. Even if it is not expressly stated, there would emerge a jural relationship between the Central Government and the industry.

26. Keeping the parameters laid down by the Supreme Court in the case of *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, applying the same to the facts of the present case, can it be said that the petitioner owes its existence to the conferment of such authority? It does not. The petitioner is a legal entity, being a public limited

company, which is incorporated under the Companies Act. It has as one of its objects running an Aerodrome, But the existence of the petitioner as a juristic personality is not traceable to the conferment of any specific authority by the Central Government. The petitioner would continue to be a legal personality whether licensed by the Central Government to run an Aerodrome or not. But, since the functioning of an Aerodrome requires a licence from various statutory authorities, the same has been applied for and obtained. The relationship between the Central Government and the petitioner in the context of the licence issued under the Aircraft Rules would only be as a licensor and a licensee and irregularity in any action the licensor may take or may not take, could be the subject matter of a judicial review, at best. But the relationship did not come into existence by reason of the conferment of an authority by the Central Government expressly as a statutory or non-statutory instrument. The licensing mechanism is regulated solely for the purpose of the Act and the Rules under which the licences are granted. The petitioner cannot be considered as owing its existence or continuance to the authority specifically conferred in that regard by the Central Government. Applying the dictum laid down by the Supreme Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , I am of the view that the petitioner cannot be considered as existing under the authority of the Central Government for the purpose of Section 2(a) of the ID Act or Section 2(a) of the CLRA Act, as the case may be.

27. The second contention taken up by Mr. Babu centers around the definition of "Air Transport Service" as occurring in the Airports Authority of India Act, 1994. Section 2(e) of the 1994 Act defines "Air Transport Service". It reads as follows:

2(e). "Air Transport Service" means any service, for any kind of remuneration, whatsoever, for the transport by air of persons, mail or any other thing, animate or inanimate, whether such service relates to a single flight or series of flights;

28. It is contended by Mr. Babu that Air Transport Service would mean any service for any kind of remuneration whatsoever, for the transport by air of persons, mail or any other thing, animate or inanimate etc. Elaborating on the same, he contended that a service which is rendered by the petitioner at the Airport could also be an "Air Transport Service" within the meaning of Section 2(e) of the 1994 Act and consequently, the Central Government should be treated as the "Appropriate Government", in relation to the petitioner.

29. Reference has also been made to the definition of "Air Transport Service" in the Aircraft Rules. Rule 3(9) of the Aircraft Rules defines "Air Transport Service". The definition of "Air Transport Service" in Airports Authority of India Act and the Aircraft Rules seems to be the same though there is a definite difference in the import of the definition in the Aircraft Rules, 1937. It reads as follows:

"Air Transport Service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration

whatsoever, whether such service consists of a single flight or series of flights.

30. Section 1(3) of the 1994 Act makes it clear that the Act applies to all airports whereat Air Transport Services are operated or are intended to be operated, other than airports and airfields belonging to or subject to the control of any armed forces of the Union. An "Airport" is defined in Section 2(b) of the Airport Authority of India Act and it includes an Aerodrome, within the meaning of Clause (2) of Section 2 of the Aircraft Act. The definition of Air Transport Service in Section 2(e) of Act 55/94 does not refer to Airport Service specifically. But it refers to any service and then it is co-related with transport by air etc. If the intention of the legislature was to see that Air Transport Service comprehends an Aerodrome which includes an Airport also, then a specific indication would have been available in the statute itself. Though the words used in "Air Transport Service" u/s 2(e) of the 1994 Act refers to any service, obviously, contextually or otherwise, it would be relatable to the service rendered in the transportation of persons or other things by air. Services, which are rendered in an Airport which are independently dealt with in the Aircraft Act, 1934 do not seem to be intended to be dealt with in the definition of Air Transport Service occurring in Section 2(e) of the Airports Authority of India Act.

31. Even otherwise, it will be more apposite to go by the definition of "Air Transport Service" as occurring in the Aircraft Rules, 1937 for the reason that both "Airport" and "Aircraft" are separately licensed under the Aircraft Rules 1937. Air Transport Service is independently dealt with in Rule 134(1) of the Aircraft Rules 1937 and a reference to the said Rule, in extenso would be apposite. Rule 134(1) is relevant and it reads as follows:

134."Air Transport Services":

(1) No person shall operate any scheduled air transport service from, to, in, or across India except with the permission of the Central Government, granted under and in accordance with and subject to the provisions contained in Schedule XI.

32. Rule 134(3) refers to Schedule XI and a reference to the same will show that it deals with the permission to operate Scheduled Air Transport Service. Permit as referred to in clause 13 of Schedule XI would indicate that the holder of a permit shall maintain an Operations Manual in the form approved by the Director General. The Airports Manual would contain the instructions outlining the responsibilities of operations personnel pertaining to the conduct of flight operations, the flight crew for each stage of all routes to be flown including the designation and succession of command, in-flight procedure, emergency flight procedure, the minimum safe flight altitude for each route to be flown, the circumstances in which a radio listening watch is to be maintained, a list of the navigational equipments to be carried and any other relevant information.

33. To clarify any lingering doubts, I requested Mr. Pathros Mathai to ascertain whether the petitioner Airport functions under any Air Transport Service licence

issued in that behalf. He has placed for my perusal the "Airport licence" issued by the Director General under Rule 78 of the Aircraft Rules and for the purpose of contra distinction he has also made available the permit granted in favour of M/s. Paramount Airways, a scheduled Air Transport Service. Both are obviously different and he further affirms that hitherto no query has been made in this regard regarding the necessity for a licence to the petitioner to operate an "Air Transport Service".

34. I am of the view that the services rendered by the petitioner, in the context of the Aircraft Act, Aircraft Rules and Airports Authority of India Act would not require an Air Transport Service licence for the purpose of the said Rules (the Aircraft Rules, 1937) under which an Aerodrome is also licensed, as a matter of fact. Therefore, I am unable to accept the second contention raised by Mr. Babu.

35. There is yet another aspect which I deem it relevant to highlight. The CLRA Act contemplates only one registration for every principal-employer. The registration is to be given by the Registering Authority under an "Appropriate Government". If the "Appropriate Government" is the Central Government, then no other State Government can be the "Appropriate Government", in relation to the same establishment. If the "Appropriate Government" is the State Government, then the Central Government cannot be the "Appropriate Government" for the same establishment. The petitioner has been granted registration by the State registering authority as evidenced by Ext.PI. The Registration continues to be valid and operative. The provisions of the Act do not reveal a case where the registering authority under the Central Government would be in a position to ignore the registration granted by the registering authority of the State Government. If the registration granted under the State Government is capable of revocation and if it is revoked, then alone it could seek registration of the establishment with the registering authority under the Central Government. No such contingency has arisen. I am not examining the question as to whether the Central Government would be entitled to seek revocation of the registration of the establishment under the State Government, as I am satisfied, for the reasons elaborately mentioned above, that it is the State Government that is eligible to be treated as the "Appropriate Government" in relation to the petitioner for the purpose of the ID Act and consequently for the purpose of the CLRA Act.

For all these reasons, I am of the view the petitioner is entitled to succeed. The Writ Petition is therefore, allowed. Exts.P5 and P7 are quashed. There will be no order as to costs.